

RICHARD J. LAZARUS

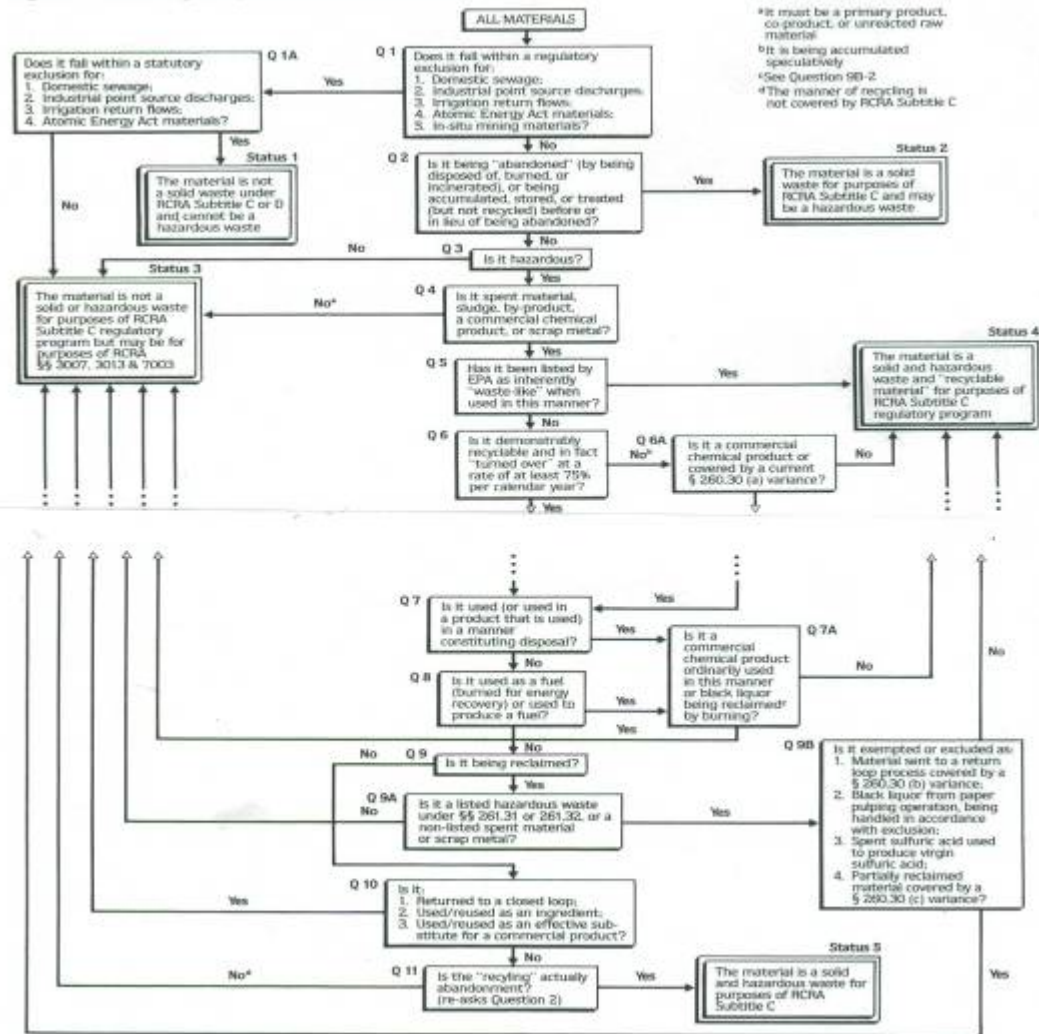
The  
Making  
*of*  
Environmental  
Law

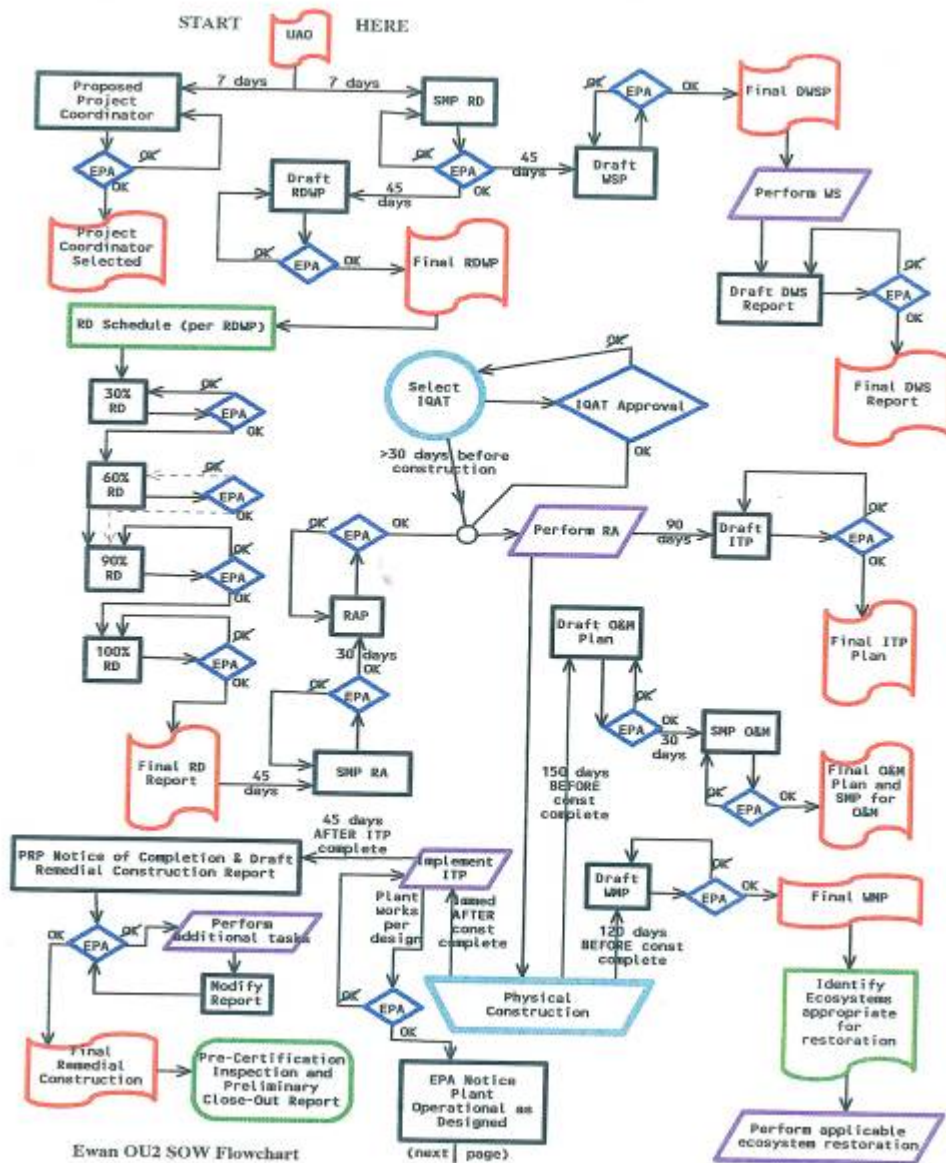


“The *Clean Water Act* is an enigmatical piece of legislation. Filled with more sesquipedalian jargon than a year's subscription to any trade journal and a byzantine system of cross references, its cross references are virtually indecipherable.”

*Citizens Coal Council v. U.S. EPA* (6<sup>th</sup> Cir. Oct. 2004)

Figure 3. Current Regulatory Definition of Solid Waste.











## The Making of Environmental Law

Richard J. Lazarus

Table 1-13  
SOURCES AND ENVIRONMENTAL PATHWAYS  
THAT CAN RESULT IN EXPOSURES OF  
HUMAN POPULATIONS TO LEAD

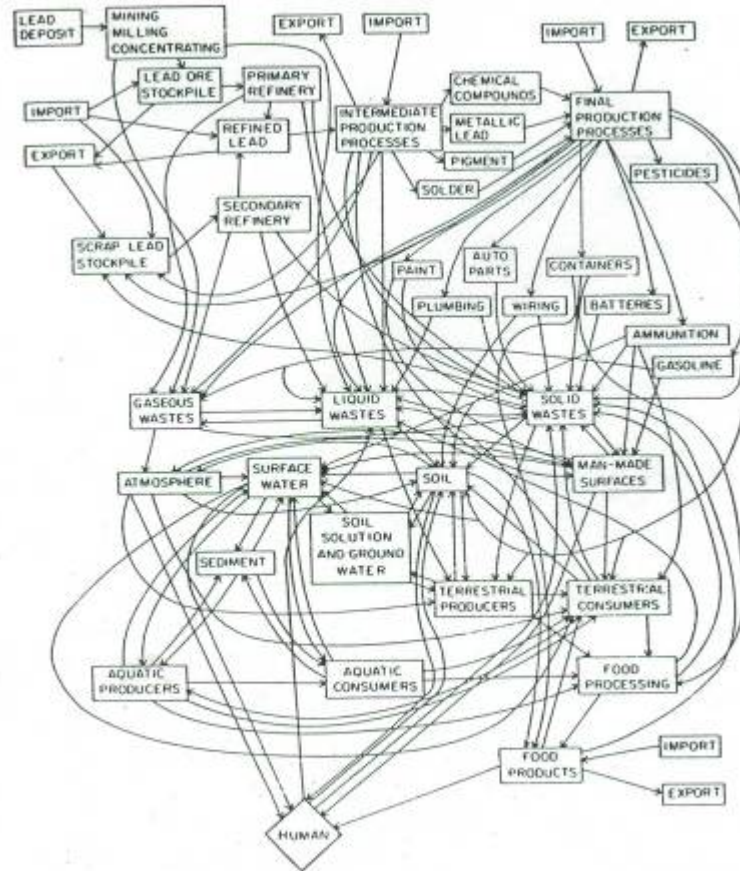
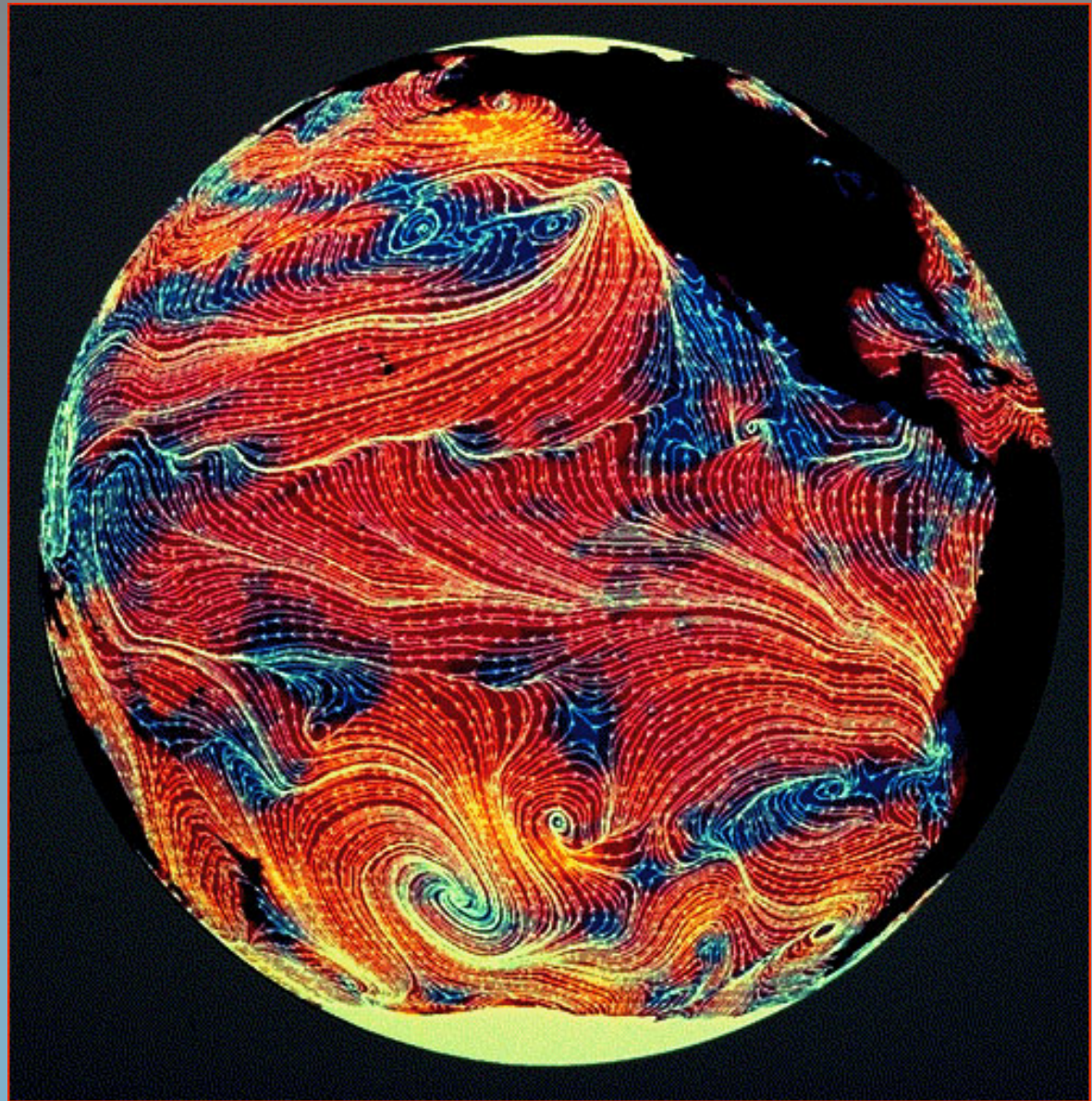


FIGURE 2.2 Sources and environmental pathways that can result in exposures of human populations to lead of anthropogenic origin. The figure suggests qualitative interrelationships and illustrates the complexity of the system. Quantitative estimates of transfers by the various pathways are subject to many uncertainties (see Step 3 for discussion). Source: Modified from Rolfe and Reinbold (1977).

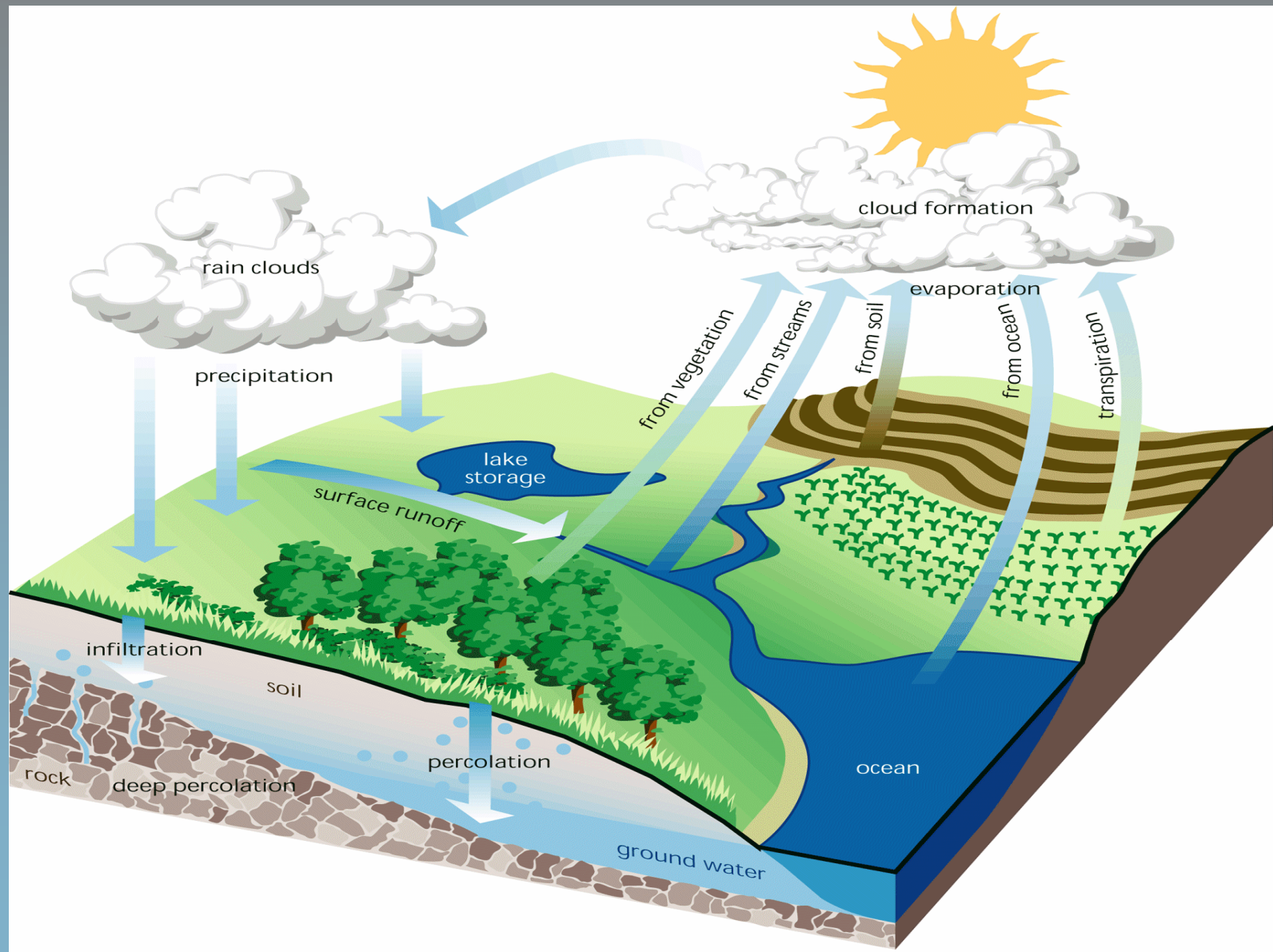


**Global  
Wind  
Patterns**

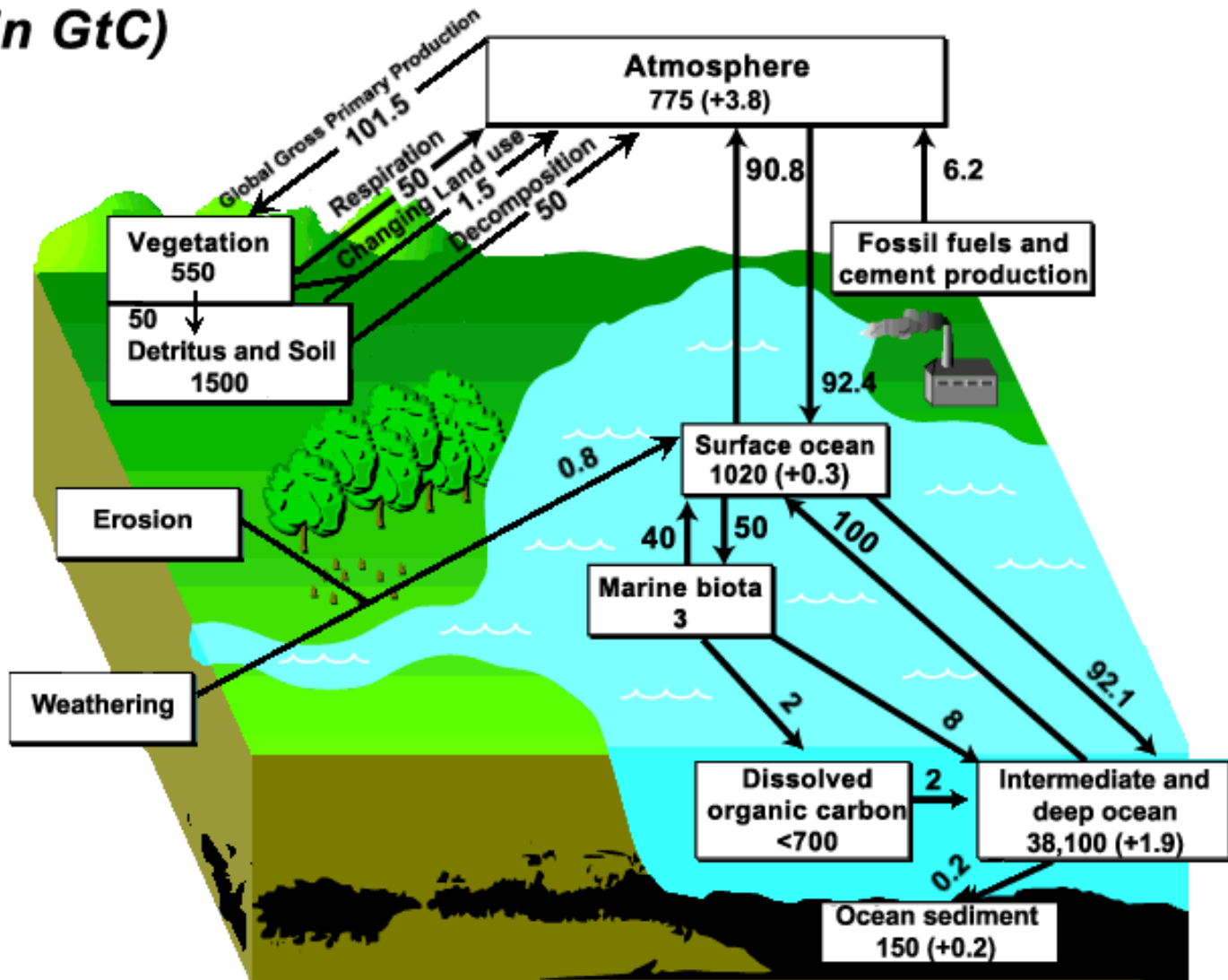


NASA





# Global Carbon Cycle (1992-1997) (in GtC)



*Chevron Inc. v. Natural Resources Defense Council, Inc.*

*Solid Waste Agency of Northern Cook County v. C.O.E.*

*Whitman v. American Trucking Ass'n*

*Lucas v. South Carolina Coastal Council, Inc.*

*Lujan v. Defenders of Wildlife*

*Morrison v. Olson*

*Robertson v. Seattle Audubon Society*

*New York v. United States*

# Becoming Environmental Law





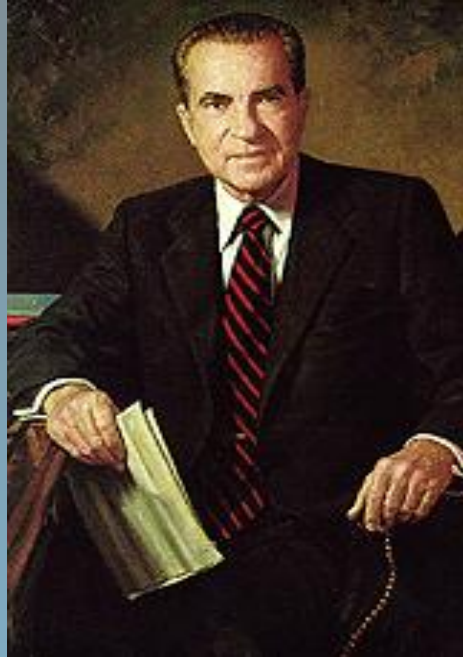
# The Nixon Administration

1970

NEPA

EPA

Clean Air Act



1972

Federal Water  
Pollution Control  
Act Veto

*“Go Live Like A  
Bunch of Damned  
Animals”*

**“The environment is not a good political issue, only a good defensive one.”**

re environment -

has to be done -

but is not worth a damn

have uneasy feeling -

we're doing too much.

Knows it's not a good political issue

only a good defensive issue

we're catering to the left in all of this

Don't play up idea of destroying system

**Haldeman Notes Phone Call with President, Feb. 9, 1971**

① shld take on environment - it's not sacred cow -  
our whole line is responsibility - hard to sell  
ultimately it is freedom (from big govt)

**Haldeman Personal Notes, Meeting w/ President (6/27/71)**

re examine all pollution bills  
in terms of current economic effects  
put brakes on when we can -  
w/o getting caught  
economic more important. Than cutting back  
dead end of jobs & seat belts

## Haldeman Personal Notes Meeting with President (7/23/71)



The President said, "may I respectfully suggest that the environmentalists are over-rated and all of the ecology arguments we hear about today are for the privileged, not the underprivileged. The doorman in New York City never gets out of the city. The disadvantaged don't get the benefits of ecology. The only ones who gets the benefits of the ecology as we hear about it today are the rich people and Douglas -- (meaning Justice Douglas)."

**Memorandum for File, President's Meeting with Republican Members of the Senate Finance Committee (June 27, 1972)**

# The “Environmental President”

**1989**



**BOSTON HARBOR**

**CLEAN AIR ACT  
AMENDMENTS OF 1990**



**1992**



**QUAYLE  
COMPETITIVENESS  
COUNCIL**

**RIO**

# **Major Federal Environmental Protection Statutes Enacted During the 1970s**

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**1970 NEPA**

**1970 Clean Air Act**

**1972 Federal Water Pollution Control Act**

**1972 Federal Insecticide, Fungicide, and Rodenticide Act**

**1972 Noise Control Act**

**1972 Coastal Zone Management Act**

**1972 Marine Mammal Protection Act**

**1973 Endangered Species Act**

**1974 Safe Drinking Water Act**

**1974 Forest Rangeland Renewable Resources Planning Act**

**1975 Federal Coal Leasing Act Amendments**

**1976 Toxic Substances Control Act**

**1976 Resources Conservation and Recovery Act**

**1976 National Forest Management Act**

**1976 Federal Land Policy and Management Act**

**1976 Magnuson-Stevenson Fisheries Management Act**

**1977 Clean Air Act Amendments**

**1977 Clean Water Act Amendments**

**1977 Surface Mining Control and Reclamation Act**

**1978 Outer Continental Shelf Lands Act**

REPRODUCED AT THE NATIONAL ARCHIVES  
BARRY GOLDWATER  
ARIZONA  
J 146

United States Senate  
WASHINGTON, D.C. 20510

COMMITTEES:  
AERONAUTICAL AND SPACE SCIENCES  
ARMED SERVICES  
PREPAREDNESS INVESTIGATING SUBCOMMITTEE  
TACTICAL AIR POWER SUBCOMMITTEE  
NATIONAL CYCLOPLE AND NAVAL PETROLEUM  
RESERVES SUBCOMMITTEE

November 23, 1970

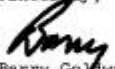
The Honorable Jennings Randolph  
United States Senate  
5121 New Senate Office Building  
Washington, D. C.

Dear Jennings:

Enclosed is a copy of a memorandum containing suggested changes and the reasons for them sent to me by the Kennecott Copper Corporation in Arizona. They have asked that I make a copy available to you or one of your staff experts so that you can see if there are any technical changes which seem necessary and reasonable.

To make my position absolutely clear, I enthusiastically support our strong Senate version and would only ask that any impractical aspects that have come to light be examined closely.

Sincerely,

  
Barry Goldwater



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5121 New Senate Office Building  
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Sincerely,

A handwritten signature in black ink, appearing to read "Barry", is written over the typed name "Barry" in the signature line.

# **The Second Decade of Environmental Statutes 1980-1990**

**Comprehensive Environmental Response,  
Compensation & Liability Act (Superfund)  
Emergency Planning and Community Right to Know Act  
Alaska National Interest Lands Conservation Act  
Hazardous and Solid Waste Act Amendments of 1984  
Safe Drinking Water Act Amendments of 1986  
Superfund Amendments and Reauthorization Act of 1986  
Water Quality Act of 1987  
Medical Waste Tracking Act of 1988  
Oil Spill, Pollution, Prevention Act of 1990  
Clean Air Act Amendments of 1990**

Statute

Statutes at Large

Clean Air Act of 1963

11 pages

Clean Air Act of 1970

38 pages

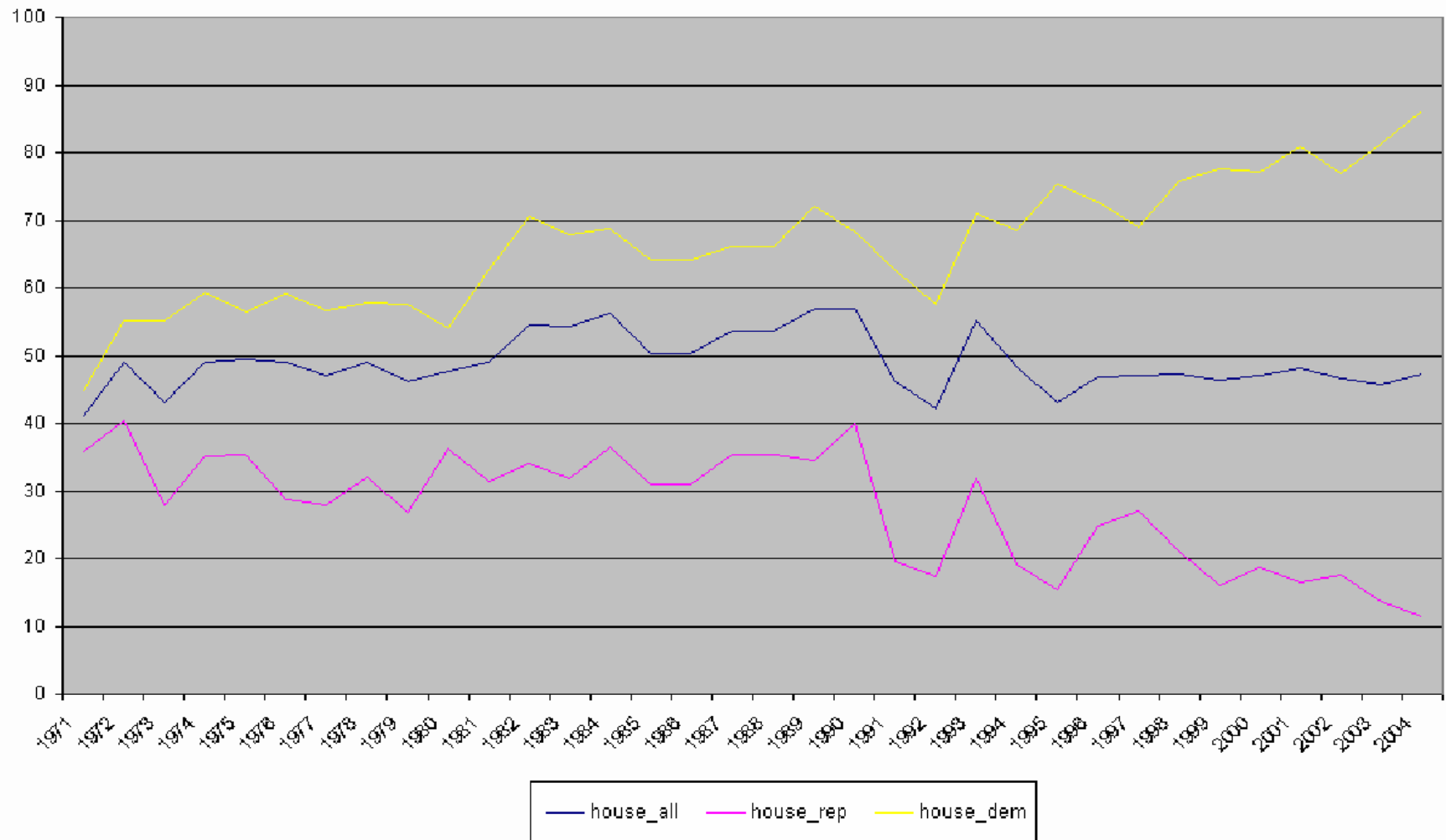
Clean Air Act of 1977

112 pages

Clean Air Act of 1990

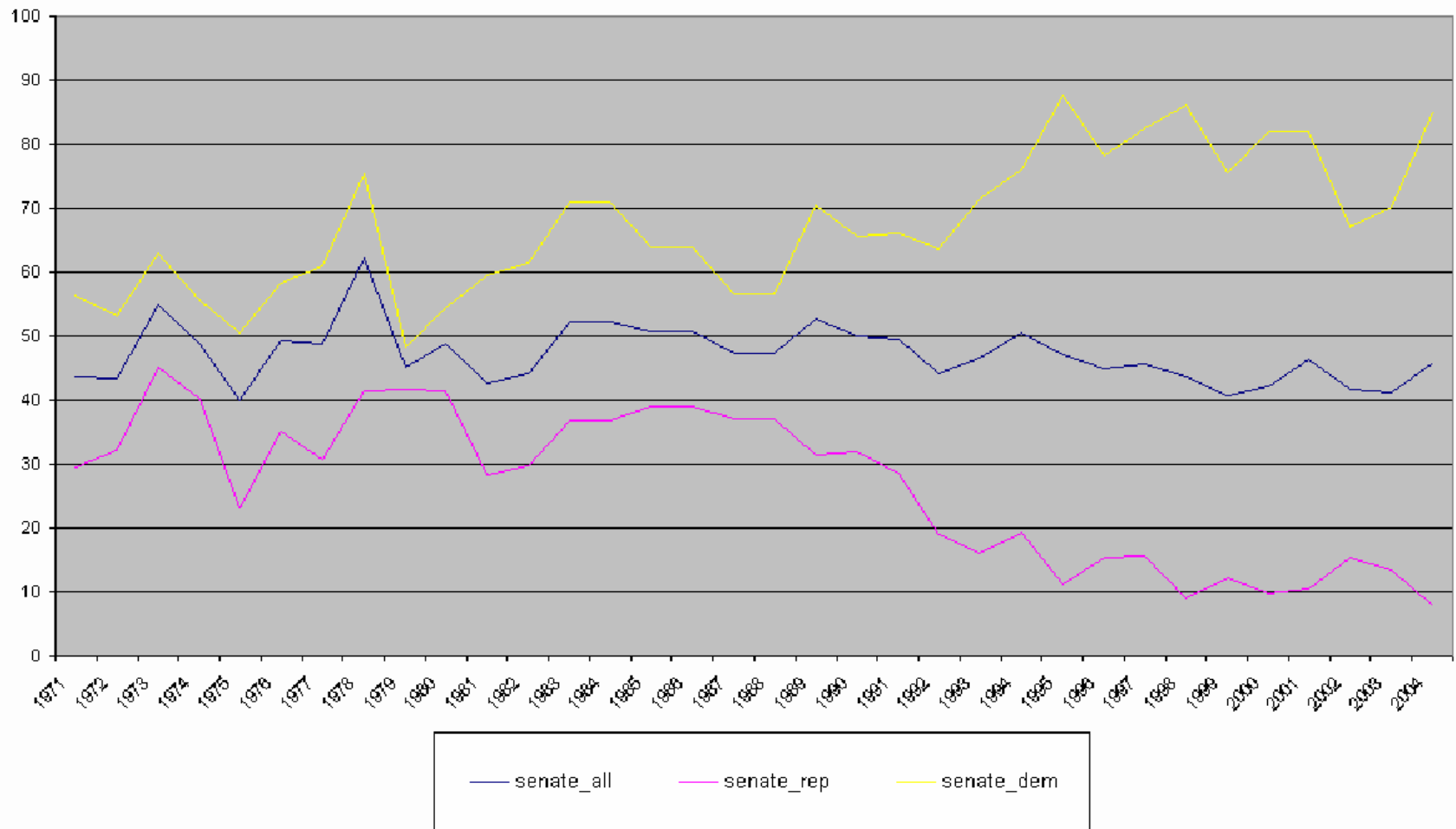
314 pages

# House LCV Scores 1971-2004

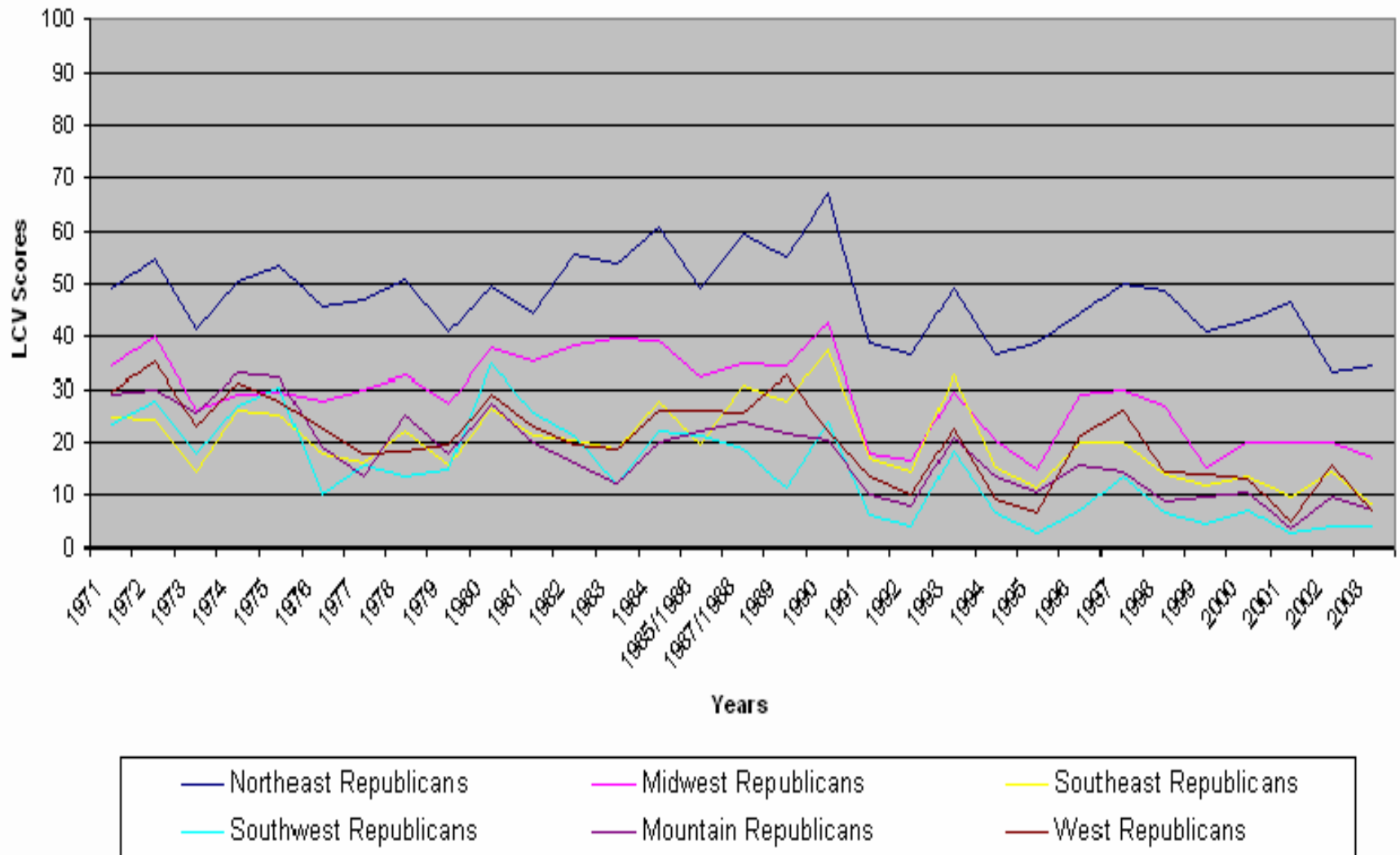




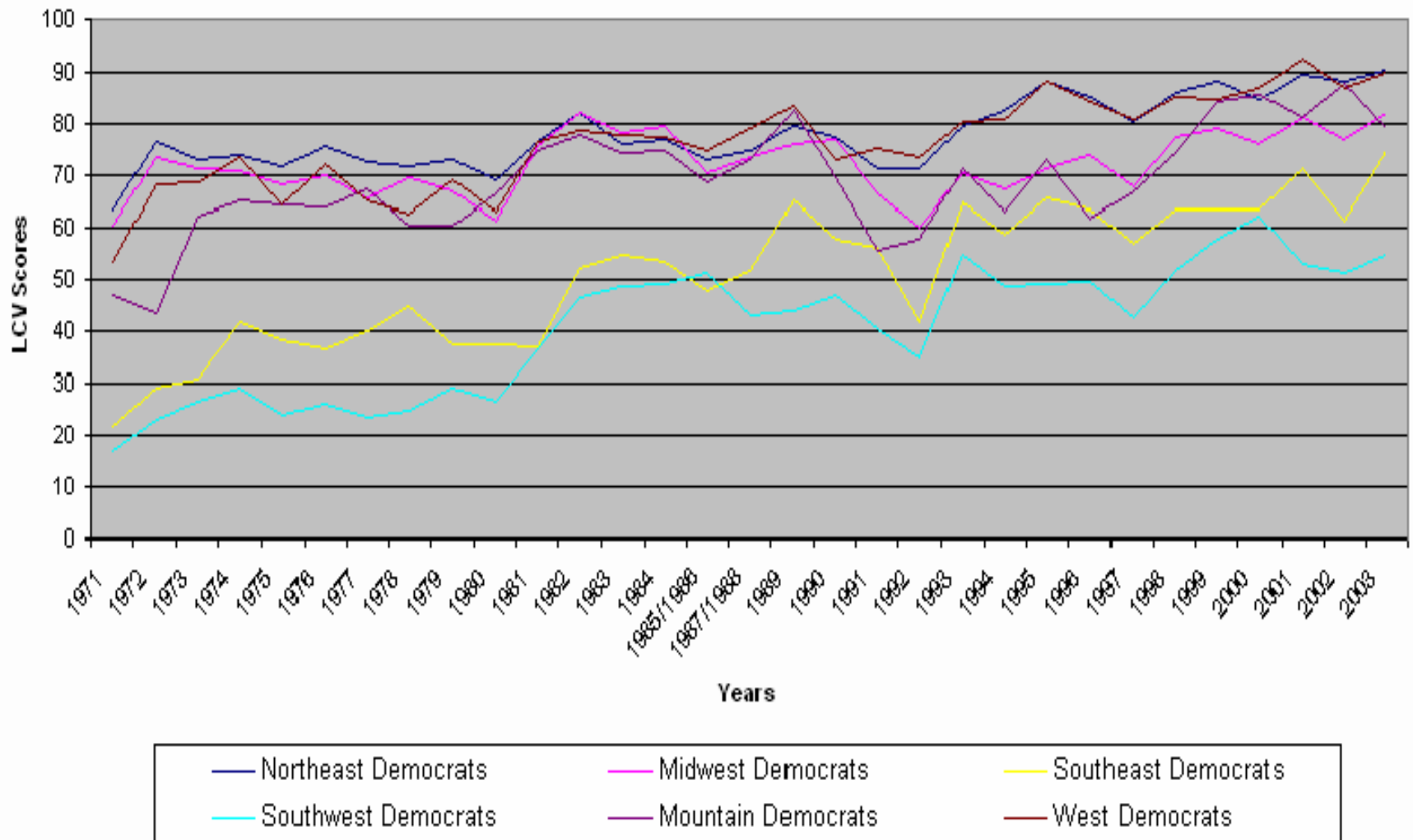
# Senate LCV Scores 1971-2004



# HOUSE LCV SCORES 1971-2003--REGIONAL REPUBLICANS



HOUSE LCV SCORES 1971-2003--REGIONAL DEMOCRATS



## TITLE III—ENVIRONMENTAL PROTECTION

## INDEPENDENT AGENCIES

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF  
ENVIRONMENTAL QUALITY

For expenses necessary for the Council on Environmental Quality and the Office of Environmental Quality, in carrying out their functions under the National Environmental Policy Act of 1969 (Public Law 91-190) and the National Environmental Improvement Act of 1970 (Public Law 91-224), including hire of passenger vehicles, and support of the Citizens Advisory Committee on Environmental Quality established by Executive Order 11472 of May 29, 1969, as amended by Executive Order 11514 of March 5, 1970, \$2,300,000.

83 Stat. 852.

42 USC 4321

note.

84 Stat. 114.

42 USC 4371

note.

42 USC 4321

note.

## ENVIRONMENTAL PROTECTION AGENCY

## OPERATIONS, RESEARCH, AND FACILITIES

For necessary expenses of the Environmental Protection Agency, including official reception and representation expenses (not to exceed \$2,000); hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; \$441,400,000, to remain available until expended: *Provided*, That this appropriation shall be available only within the limits of amounts authorized by law for fiscal year 1972.

80 Stat. 416.

5 USC 5332

note.

## CONSTRUCTION GRANTS

For grants for construction of waste treatment works pursuant to section 8 of the Federal Water Pollution Control Act, as amended, \$2,000,000,000, to remain available until expended: *Provided*, That this appropriation shall be available only within the limits of amounts authorized by law for fiscal year 1972.

70 Stat. 502;

70 Stat. 503.

33 USC 1158.

## SCIENTIFIC ACTIVITIES OVERSEAS (SPECIAL FOREIGN CURRENCY PROGRAM)

For payments in foreign currencies which the Treasury Department determines to be excess to the normal requirements of the United States, for necessary expenses of the Environmental Protection Agency in the conduct of scientific activities overseas in connection with environmental pollution, as authorized by law, \$7,000,000, to remain available until expended: *Provided*, That this appropriation shall be available, in addition to other appropriations to such Agency, for payments in the foregoing currencies.

## NATIONAL COMMISSION ON MATERIALS POLICY

For expenses necessary to carry out the provisions of title II of the Act of October 28, 1970 (84 Stat. 1234-1235), \$500,000.

42 USC 3251

note.



*But it remains to be seen whether the promise of this legislation will become a reality. Therein lies the judicial role. \* \**

*\* Our duty, in short, is to see that important legislative purposes, heralded in the halls of Congress, are not lost or misdirected in the vast hallways of the federal bureaucracy.*

*Calvert Cliffs Coordinating Council v. US AEC (D.C. Cir. 1971 (Opinion by Judge Skelly Wright))*



Ruckelshaus

v.

Sierra Club

Blackmun

Personal  
Notes

72-804

My gut reaction is us + go's point here.

1. We hv a prob
2. Long acted
3. EPA took a prob
4. Sts will compete downward
5. Pollution is no respecter of St boundaries
6. This will force Industry - infra + us - + get sg
7. Need + preserve so decent areas.
8. Who is + emphasis - on production or on pollution?
9. Utah surprises me
10. Only by natl action can we hv effective action
11. Doubt if + ans is + to found in balay.
12. If + is wrong, Cong can correct - resolve +  
doubts in the future
13. "Promote + enhance" is general lang but it is signif +  
has clear meaning, despite its by in + preamble
14. helps but favors Regt. the entire both ways somewhat
15. Policy for me is all one way.



- 4 It's not complete downward
- 5 Pollution is no respecter of St boundaries
- 6 This will force industry - infra & use - to get sg
- 7 Need to preserve so decent areas.
- 8 What is the emphasis - on production or on pollution?
- 9 Utah companies are
- 10 Only by state action can we have effective action

12 If it is wrong, Congress can correct - restore & protect in the future

13 "Promote & enhance" is general language but it is subject to no clear meaning, separate it by an & preclude

14 higher level of protection that enters both ways somewhat

15 Policy for me is all one way.

No. 82-1005)  
82-1247)  
82-1591)

Chevron USA, Inc. v. Natural Resources Defense Council, Inc.  
American Iron & Steel Institute v. Natural Resources Def. Council  
Ruckelshaus v. Natural Resources Defense Council, Inc.

3-2-84

The Chief Justice +

EPA counter go pretty far  
he + settle  
do by + !!  
to BRW  
+ I write join

Brennan, J. +

2 same define troublesome  
EPA can do it best ways  
may n b what Congress intended  
we go plant perpetual not to  
pollute at achieved level  
EPA has changed into  
→ +  
EPA write b committed by Congress  
plantmaker

White, J. - ?

very shaky but → -  
also from personal view

Marshall, J.

absent

- ?

Powell, J. - ?

Stat complicated  
defen is due to agay whether fully  
Ala Pow  
Its be primary resp  
On gal, doai proba same growth  
+ a disincerto  
w/ bubble present gallertu  
pals?  
2 defins?

Rehnquist, J.

OOT

Stevens, J. - ?

n at rest  
defen ought + b + sa stern + stat  
n sure Ala Pow completely  
continually  
permissible ready + + stat  
Use Ala report confusing!  
On I am so confused, I go  
out + agay

O'Connor, J. +

that bubble made sense as a con-  
+ no support E/A  
Index is suffering  
very painful for me

O'Connor, J. +

that bubble made sense as a concept  
LH no support E/A  
Rubens is suffering  
very painful for me

Stevens, J. —?

n at rest  
before night + b + se them + state  
in some Ala Pan completely  
continually

permissible ready v + state  
See Lee report confusing!  
On I am so confused, I go  
with Agcy



# Environmental Law in the U.S. Supreme Court

## October Term 2003

*Alaska v. EPA*

*SFWMD v. Miccosukee Tribe*

*Bed-Roc v. U.S.*

*USDOT v. Public Citizen*

*Norton v. Southern Utah Wilderness Alliance*

*Cheney v. US Dist Ct*

*Engine Manuf v. SCAQMD*

# The Graying of the Green



Pixelfusion Graphics 610 230 7000



## The Making of Environmental Law

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